



This document is scheduled to be published in the Federal Register on 05/08/2014 and available online at <http://federalregister.gov/a/2014-10533>, and on FDsys.gov

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Docket No. FWS–R4–ES–2013–0031

4500030113

RIN 1018–AZ59

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Florida Leafwing and Bartram’s Scrub-hairstreak Butterflies

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the August 15, 2013, proposed designation of critical habitat for the Florida leafwing (*Anaea troglodyta floridalis*) and Bartram’s scrub-hairstreak (*Strymon acis*

bartrami) butterflies under the Endangered Species Act of 1973, as amended (Act). We are proposing to revise the previously proposed critical habitat for these species by including hydric pine flatwoods in their primary constituent elements and by increasing the size of the Everglades National Park Unit for each butterfly to 7,994 acres (ac) (3,235 hectares (ha)). In total, we are proposing to designate as critical habitat 10,561 ac (4,273 ha) in four units for the Florida leafwing, and 11,539 ac (4,670 ha) in seven units for the Bartram's scrub-hairstreak; all units are located within Miami-Dade and Monroe Counties, Florida. We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section for the proposed determination. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Document availability: You may obtain copies of the proposed rule and the associated DEA on the internet at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2013-0031 or

by mail from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>.

Submit comments on the critical habitat proposal and associated DEA by searching for Docket No. FWS–R4–ES–2013–0031, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments on the critical habitat proposal and associated DEA by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0031; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960, by telephone (772–562–3909), or by facsimile (772–562–4288). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our revised proposed designation of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak, our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

- (a) The distribution of the Florida leafwing and Bartram's scrub-hairstreak;
- (b) The amount and distribution of Florida leafwing and Bartram's scrub-hairstreak habitat; and
- (c) What areas occupied by either or both species at the time of listing contain

features essential for the conservation of the species and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their probable impacts on proposed critical habitat of either or both species.

(4) Information on the projected and reasonably likely impacts of climate change on the Florida leafwing and Bartram's scrub-hairstreak and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.

(7) The likelihood of adverse social reactions or social welfare impacts to the designation of critical habitat, as discussed in the associated documents of the DEA, and how the consequences of such reactions or impacts, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation for either or both species.

(8) Whether any areas we are proposing for critical habitat designation for either or both species should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information on the proposed rule (78 FR 49832) during the initial comment period from August 15, 2013, to October 15, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. However, new comments may be submitted. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R4–ES–2013–0031, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at Docket Number FWS–R4–ES–2013–0031, or by mail from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Florida leafwing and Bartram’s scrub-hairstreak in this document. For more information on the Florida leafwing and Bartram’s scrub-hairstreak and their habitats, refer to the

proposed listing and critical habitat rule published in the **Federal Register** on August 15, 2013 (78 FR 49832), which is available online at <http://www.regulations.gov> (at Docket Number FWS–R4–ES–2013–0031) or from the South Florida Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On August 15, 2013, we published a proposed rule to designate critical habitat for the Florida leafwing and Bartram’s scrub-hairstreak (78 FR 49832). We proposed to designate approximately 8,283 ac (3,351 ha) in four units for the Florida leafwing and 9,261 ac (3,748 ha) in seven units for the Bartram’s scrub-hairstreak, located in Miami-Dade and Monroe Counties, Florida, as critical habitat. That proposal had a 60-day comment period, ending October 15, 2013.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section

7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

New Information and Changes from the Previously Proposed Critical Habitat

In this document, we are notifying the public of changes to the proposed critical habitat rule. In the August 15, 2013, proposed rule (78 FR 49832), we discussed the current distribution of the Florida leafwing and Bartram's scrub-hairstreak. Our analysis indicated the Florida leafwing is known to actively disperse throughout the majority of the Long Pine Key region of Everglades National Park (ENP) (Salvato and Salvato 2010, p. 91; 2010c, p. 139). Similarly, Salvato and Salvato (2010b, p. 159) indicated that, while generally uncommon, the Bartram's scrub-hairstreak is widespread within the Long Pine Key region.

Since publication of the proposed rule, we have obtained new information regarding the distribution of the Florida leafwing and Bartram's scrub-hairstreak documenting that their distribution, as well as the boundaries of pine rockland habitat within ENP in which they occur, is larger than we indicated in the proposed rule. Sadle (pers. comm. 2013c) and Salvato (pers. comm. 2013) indicate that several areas with recent Florida leafwing and Bartram's scrub-hairstreak observations, as well as areas with known hostplant populations, were not included within the critical habitat boundaries proposed for the ENP in the Miami-Dade County, Florida,

Units of each butterfly.

Accordingly, we are proposing to revise our proposed critical habitat designation for the Florida leafwing and Bartram's scrub-hairstreak by increasing the size of the ENP Miami-Dade County, Florida, Units of both butterflies from 5,716 ac (2,313 ha) to 7,994 ac (3,235 ha), to incorporate the additional pine rockland and associated habitats within the Long Pine Key region of ENP where additional recent sightings have been documented. These habitat patches in the expansion area of proposed critical habitat will ensure connectivity between viable populations within the Long Pine Key region of ENP.

In total, we are proposing to designate critical habitat consisting of 10,561 ac (4,273 ha) in four units for the Florida leafwing and 11,539 ac (4,670 ha) in seven units for the Bartram's scrub-hairstreak, located in Miami-Dade and Monroe Counties, Florida. For a full description of the previously proposed units for these subspecies, please see the proposed critical habitat rule (78 FR 49832; August 15, 2013).

We also received new information which indicates existing data do not support the necessity of including a specified return interval for disturbance (i.e., 3 to 5 years for fire), as indicated under primary constituent element (PCE) 4. Information indicates that the butterflies have been observed at varying densities within pine rocklands that have burned at intervals of up to 10 years. Observations of the Florida leafwing and Bartram's scrub-hairstreak within portions of Long Pine Key that have experienced fire or other disturbance regimes at intervals of up to 10

years (Salvato and Salvato 2010a, p. 91; 2010b, p. 154; Sadle pers. comm. 2013c) suggest further studies are required on the influence of these factors on butterfly ecologies. In addition, we received new information that indicates the physical and biological feature (PBF) 5 should be modified to mention storms, in addition to fire, as disturbance regimes for both butterflies (Cook 2013, pers. comm.).

Because of this new information on the distribution of Florida leafwing and the Bartram's scrub-hairstreak, as well as additional comments we received on disturbance regimes and fire-return intervals in the pine rocklands of ENP, we are proposing to revise the physical and biological features (PBFs) and corresponding primary constituent elements (PCEs) for both butterflies to include the new habitats and disturbance regimes and to modify fire-return intervals. Therefore, for both butterflies, hydric pine flatwoods are being included in all habitats of the PBFs and the PCEs. Specific time intervals have been removed from the disturbance and fire-return intervals of the PCEs for both butterflies.

Therefore, the purpose of this proposed revision to the proposed critical habitat is to include these new areas that are currently occupied by Florida leafwing and the Bartram's scrub-hairstreak, which contain the PBFs essential to the conservation of the species, and may require special management considerations or protection, and thus meet the definition of critical habitat. The expansion of the ENP unit included in the proposed designation would provide for the conservation of both butterflies by:

- (1) Maintaining the PBFs essential to the conservation of both butterflies where they are known to occur;
- (2) Maintaining their current distribution, thus preserving genetic variation throughout the range of the species and minimizing the potential effects of local extirpation; and
- (3) Maintaining connectivity between viable populations within the Long Pine Key region of ENP.

Proposed Critical Habitat Designation

We are proposing to revise the previously proposed critical habitat for the Florida leafwing and Bartram's scrub-hairstreak by increasing the size of the ENP Miami-Dade County, Florida, Units of both butterflies. The proposed critical habitat units constitute our current and best assessment of the areas that meet the definition of critical habitat for these subspecies. Except for the ENP units of Florida leafwing and Bartram's scrub-hairstreak, the proposed critical habitat for both butterflies are unchanged from our descriptions in the August 15, 2013, proposed rule (78 FR 49832), and are not repeated in this document. We present below brief descriptions of the revised ENP Miami-Dade County, Florida Unit, and reasons why it meets the definition of critical habitat for the Florida leafwing and Bartram's scrub-hairstreak.

Everglades National Park Unit, Miami-Dade County, Florida

The proposed ENP Miami-Dade County, Florida Unit for Florida leafwing and Bartram's scrub-hairstreak consists of 7,994 ac (3,235 ha) in Miami-Dade County. This unit is composed entirely of lands in Federal ownership, 100 percent of which are located within the Lone Pine Key region of ENP. This unit is currently occupied by both butterflies and contains all the PBFs, including suitable habitat (pine rockland and associated rockland and hydric pine flatwood habitats of sufficient size), hostplant presence, natural or artificial disturbance regimes, low levels of nonnative vegetation and larval parasitism, hostplant, and restriction of pesticides and contains the PCE of pine rockland (PCE #1 for both species).

The PBFs in this unit may require special management considerations or protection to address threats of fire suppression, habitat fragmentation, poaching, and sea level rise. However, in most cases these threats are being addressed or coordinated with the National Park Service to implement needed actions.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider, among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Florida leafwing and Bartram's scrub-hairstreak, the benefits of critical habitat include public awareness of the presence of the Florida leafwing and Bartram's scrub-hairstreak and the importance of habitat protection, and where a Federal nexus exists, increased habitat protection for the Florida leafwing and Bartram's scrub-hairstreak due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and

information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. As part of this assessment we identify the geographic areas or specific activities that could experience the greatest impacts, measured in terms of changes in social welfare. To assess the probable economic impacts of a designation, we begin by identifying the specific land uses or activities and projects that may occur in areas proposed as critical habitat. We then evaluate the impacts that a specific critical habitat designation may have in terms of restricting or modifying these land uses or activities for the benefit of the species and its habitat. Next, we determine which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios “without critical habitat” and “with critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline costs, therefore, include the costs of all efforts

attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Florida leafwing and Bartram’s scrub-hairstreak (IEc 2014, entire). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic

impacts. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation and may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is our DEA of the proposed critical habitat designation for the Florida leafwing and Bartram's scrub-hairstreak and is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable and if sufficient data are available, the probable impacts to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our IEM dated November 26, 2013, we identified probable incremental economic impacts associated with the following categories of activities: (1) Fire management; (2) forest management; (3) conservation/restoration; (4) flood control; (5) recreation; (6) water quality/supply; (7) development; (8) utilities; (9) mosquito control; (10) transportation; and (11) tourism. We considered each industry or category individually for each butterfly. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; only activities conducted,

funded, permitted, or authorized by Federal agencies. In areas where the Florida leafwing and Bartram's scrub-hairstreak are present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designations, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to distinguish between the effects that would result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for the Florida leafwing and Bartram's scrub-hairstreak. Because the designation of critical habitat for Florida leafwing and Bartram's scrub-hairstreak was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Florida leafwing and Bartram's scrub-hairstreak would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for these subspecies.

The proposed revised critical habitat designation for the Florida leafwing totals approximately 10,561 ac (4,273 ha), of which approximately 74 percent is currently occupied by the butterfly. The proposed critical habitat designation includes lands under Federal (85 percent), State (3 percent), and private and local municipal (12 percent) ownership.

The proposed revised critical habitat designation for the Bartram's scrub-hairstreak totals approximately 11,539 ac (4,670 ha) of which 98 percent is currently occupied by the butterfly. The proposed critical habitat designation includes lands under Federal (80 percent), State (5 percent), and private and local municipalities (15 percent) ownership.

In other words, approximately 98 percent of proposed revised critical habitat areas are considered to be occupied by one or both butterfly species, providing significant baseline protection. Any actions that may affect the Florida leafwing and Bartram's scrub-hairstreak would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the butterflies. For both butterflies, the quality of their habitat, especially when it includes the host plant, is closely linked to the species' survival. Therefore, in our DEA we determined that only administrative costs are expected in the proposed occupied critical habitat (for the Florida leafwing and Bartram's scrub-hairstreak). Thus, the Service believes that, in most circumstances, while this additional analysis will require time and resources by both the Federal

action agency and the Service, these costs would predominantly be administrative in nature and would not be significant.

Approximately 24 percent of the proposed critical habitat for the Florida leafwing butterfly is unoccupied. These areas were historically occupied, but are now unoccupied, and are essential for the conservation of the subspecies. Approximately 2 percent of the proposed critical habitat for Bartram's scrub-hairstreak is unoccupied. These areas are not known to be historically occupied by the subspecies; however they are within the historical range of the butterfly and are essential for the conservation of the subspecies. In the two units that are not occupied by either butterfly species, in the DEA we also conclude incremental impacts are likely limited to administrative costs, because of the existing baseline protections in these areas.

Specifically:

- BSHB Unit 6 consists of a mix of Federal, State, county, and private lands on the remote island of No Name Key, located in the Florida Keys. Of the acres proposed as critical habitat on No Name Key, 85 percent are currently managed for conservation purposes as part of the National Key Deer Refuge (NKDR). The remaining acres are privately owned and currently managed as part of Monroe County's Habitat Conservation Plan (HCP) related to the Federal Emergency Management Agency's National Flood Insurance Program (FEMA NFIP).
- BSHB Unit 7 occurs entirely within the NKDR, managed by the Service for conservation purposes. Future activities that may result in section 7 consultation in this unit are limited to periodic fire management and insect control activities.

Federal action agencies will most likely incur incremental costs associated with section 7 consultations. The economic costs of implementing the rule through section 7 of the Act will most likely be limited to the additional administrative effort required to consider adverse modification in a small number of future section 7 consultations. Approximately 98 percent of proposed critical habitat areas are considered to be occupied by one or both butterfly species (11,319 acres), providing significant baseline protection. Critical habitat designation is unlikely to result in incremental changes to conservation actions in currently occupied areas over and above those necessary to avoid jeopardizing of the species. Accordingly, only administrative costs are expected in those areas. In the proposed critical habitat not occupied by either butterfly species (about 2 percent), incremental impacts are also likely limited to administrative costs due to existing protections in these areas. Existing protections include Service management of the majority of the areas as part of NKDR operating under their CCP, and the remainder of the areas are privately owned and already regulated by a complex mix of Federal, State, and local land management regulations and policies.

Based on the available information, we anticipate no more than eight to nine consultations per year in occupied and unoccupied critical habitat units. Unit costs of such administrative efforts range from approximately \$400 to \$9,000 per consultation (2013 dollars, total cost for all parties participating in a single consultation). Applying these unit cost estimates, this analysis conservatively estimates that the administrative cost of considering

adverse modification in section 7 consultation will result in incremental costs of up to \$72,000 (2013 dollars) in a given year.

Regulatory uncertainty generated by critical habitat may result in landowners or buyers perceiving that the rule will restrict land or water use activities in some way and therefore value the resource less than they would have absent critical habitat. This is a perceptual, or stigma, effect of critical habitat on markets. Costs resulting from public perception of the impact of critical habitat, if they occur, are more likely to occur on private lands located in BSHB Units 2, 3, 4 and FLB Units 2 and 3 in Miami-Dade County.

Therefore, the incremental administrative burden resulting from the designation is unlikely to reach \$100 million in a given year based on the small number of anticipated consultations and pre-consultation costs. Under Executive Order 12866, agencies must assess the potential costs and benefits of regulatory actions and quantify those costs and benefits if that action may have an effect on the economy of \$100 million or more annually.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of these subspecies.

Required Determinations—Amended

In our August 15, 2013, proposed rule (78 FR 49832), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation in the DEA of the probable incremental economic impacts resulting from the designation of critical habitat for the Florida leafwing and Bartram’s scrub-hairstreak, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Order (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy Supply, Distribution, or Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for the Florida leafwing and Bartram’s scrub-hairstreak, we are amending our required determination concerning the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) and E.O. 12630 (Takings).

Regulatory Flexibility Act

Under the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts

under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

The Service’s current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities, and, to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a

significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Florida leafwing and Bartram's scrub-hairstreak in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for Florida leafwing and Bartram's scrub-hairstreak. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, we conclude that the designation of critical habitat for the Florida leafwing

and Bartram's scrub-hairstreak does not pose significant takings implications for lands within or affected by the designation.

Author

The primary authors of this notice are the staff members of the South Florida Ecological Services Field Office, Southeast Region, U.S. Fish and Wildlife Service(see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of

the Code of Federal Regulations, which was proposed to be amended at 78 FR 49832, August 15, 2013, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. In § 17.95 paragraph (i), amend the entries proposed at 78 FR 49832 on August 15, 2013, for “Bartram’s Scrub-hairstreak Butterfly (*Strymon acis bartrami*)” and “Florida Leafwing Butterfly (*Anaea troglodyta floridalis*),” by revising paragraphs (i)(2), (i)(5), and (i)(6) for both entries, to read as follows::

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Bartram’s Scrub-hairstreak Butterfly (*Strymon acis bartrami*)

* * * * *

- (2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Bartram’s scrub-hairstreak are:

(i) Areas of pine rockland habitat, and in some locations, associated rockland hammocks and hydric pine flatwoods.

(A) Pine rockland habitat contains:

- (1) Open canopy, semi-open subcanopy, and understory;
- (2) Substrate of oolitic limestone rock; and
- (3) A plant community of predominately native vegetation.

(B) Rockland hammock habitat associated with the pine rocklands contains:

- (1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory;
- (2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock; and
- (3) A plant community of predominately native vegetation.

(C) Hydric pine flatwood habitat associated with the pine rocklands contains:

- (1) Open canopy with a sparse or absent subcanopy and dense understory;
- (2) Substrate with a thin layer of poorly drained sands and organic materials that accumulates on top of the underlying limestone or calcareous rock; and
- (3) A plant community of predominately native vegetation.

(ii) The absence of competitive nonnative plant species or their existence in quantities low enough to have minimal effect on survival of Bartram's scrub-hairstreak butterfly.

(iii) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and food resources, and for adult butterfly nectar source and reproduction.

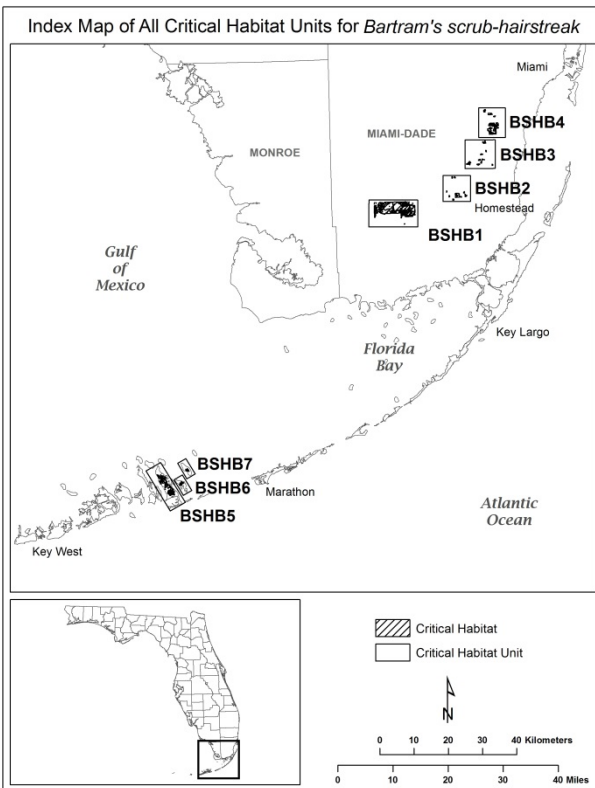
(iv) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g., fire, hurricanes, or other weather events, at appropriate intervals) that maintains the pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities.

(v) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities that allow for connectivity and are sufficient in size to sustain viable populations of Bartram's scrub hairstreak butterfly.

(vi) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

* * * * *

(5) Note: Index map of all critical habitat units for Bartram's scrub-hairstreak follows:

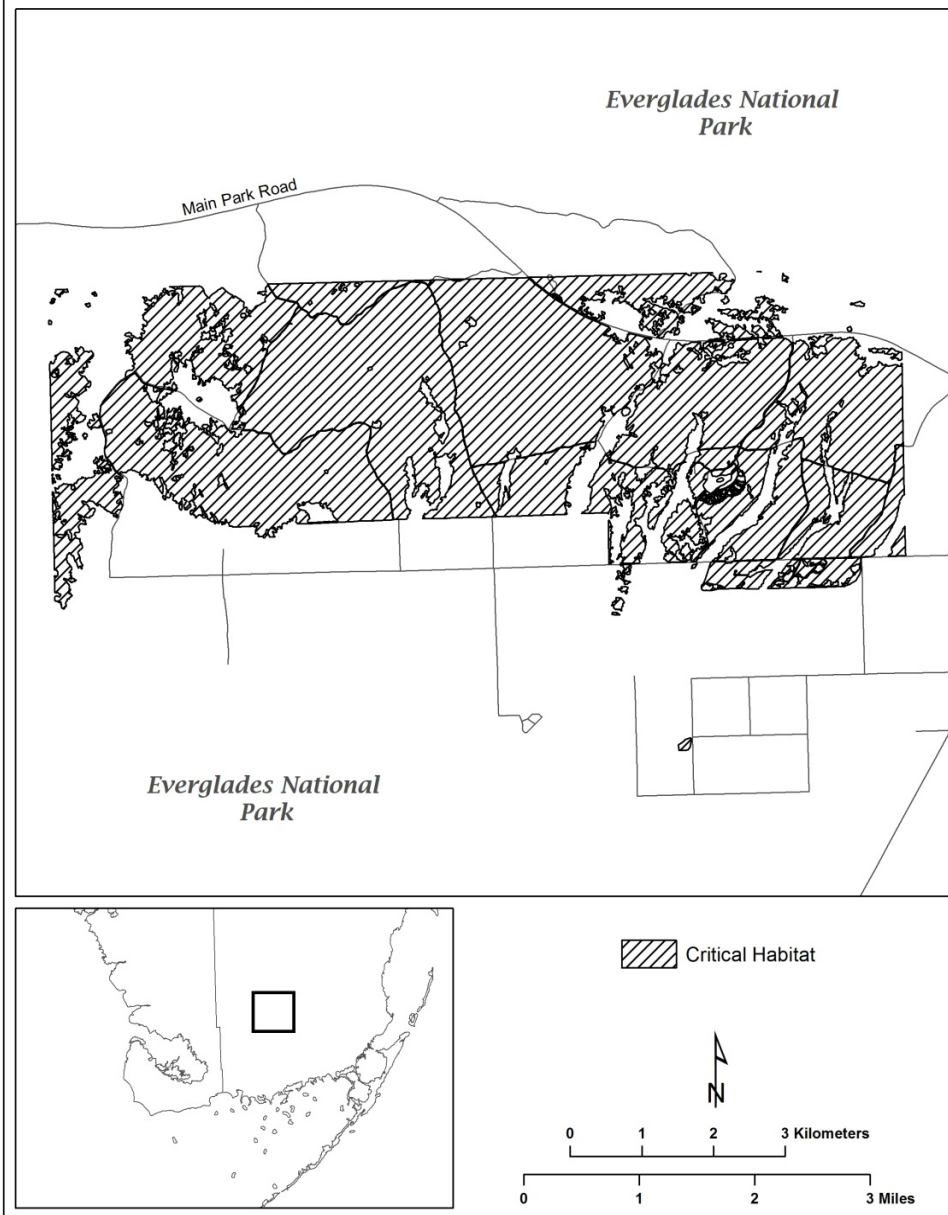


(6) Unit BSHB1: Everglades National Park, Miami-Dade County, Florida.

(i) *General Description*: Unit BSHB1 consists of 7,994 ha (3,235 ac) composed entirely of lands in Federal ownership, 100 percent of which are located within the Long Pine Key region of Everglades National Park.

(ii) Map of Unit BSHB1 follows:

Unit BSHB1: Everglades National Park, Miami-Dade County, Florida



* * * * *

Florida Leafwing Butterfly (*Anaea troglodyta floridalis*)

* * * * *

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Florida leafwing butterfly consist of six components:

(i) Areas of pine rockland habitat, and in some locations, associated rockland hammocks and hydric pine flatwoods.

(A) Pine rockland habitat contains:

(1) Open canopy, semi-open subcanopy, and understory;

(2) Substrate of oolitic limestone rock; and

(3) A plant community of predominately native vegetation.

(B) Rockland hammock habitat associated with the pine rocklands contains:

(1) Canopy gaps and edges with an open to semi-open canopy, subcanopy, and understory;

(2) Substrate with a thin layer of highly organic soil covering limestone or organic matter that accumulates on top of the underlying limestone rock; and

(3) A plant community of predominately native vegetation.

(C) Hydric pine flatwood habitat associated with the pine rocklands contains:

(1) Open canopy with a sparse or absent subcanopy and dense understory;

(2) Substrate with a thin layer of poorly drained sands and organic materials that accumulates on top of the underlying limestone or calcareous rock; and

(3) A plant community of predominately native vegetation.

(ii) The absence of competitive nonnative plant species or their existence in quantities low enough to have minimal effect on survival of the Florida leafwing.

(iii) The presence of the butterfly's hostplant, pineland croton, in sufficient abundance for larval recruitment, development, and food resources and for adult butterfly roosting habitat and reproduction.

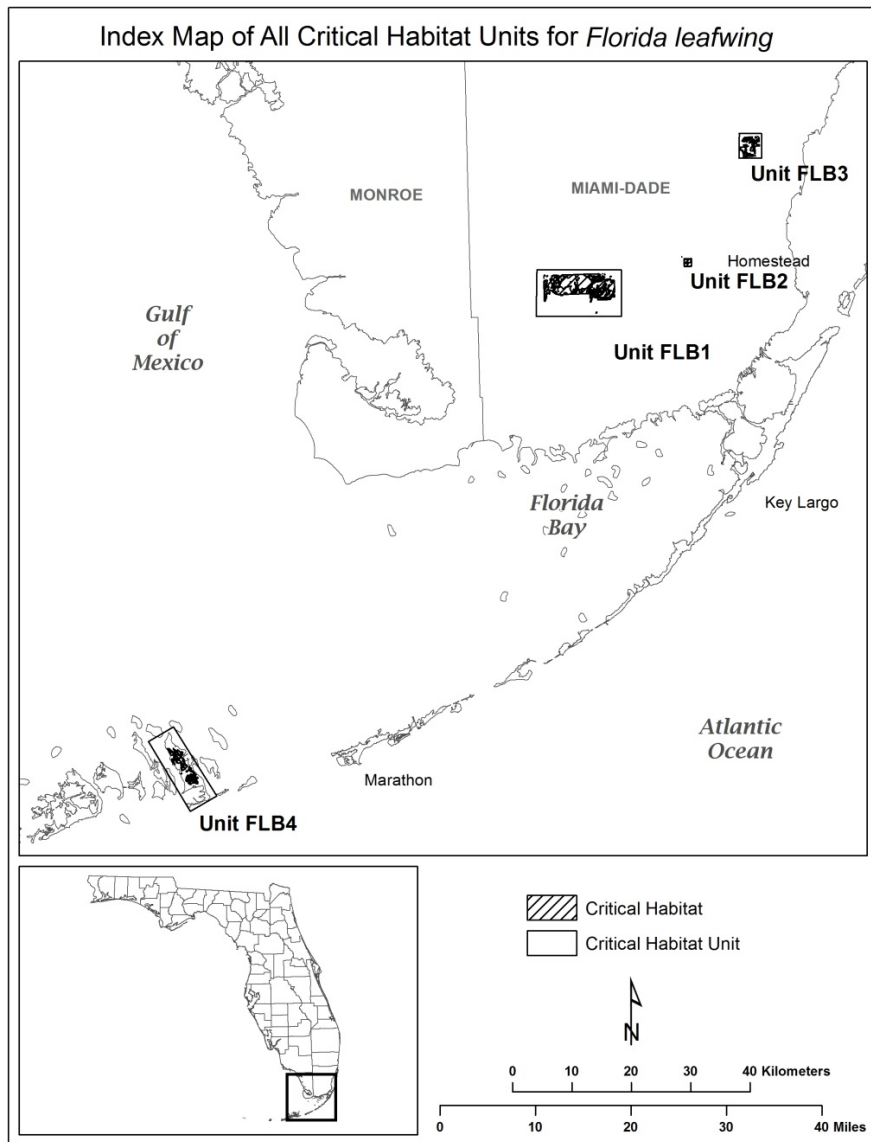
(iv) A dynamic natural disturbance regime or one that artificially duplicates natural ecological processes (e.g., fire, hurricanes, or other weather events, at appropriate intervals) that maintains the pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities.

(v) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities sufficient in size to sustain viable Florida leafwing populations.

(vi) Pine rockland habitat and associated hardwood hammock and hydric pine flatwood plant communities with levels of pesticide low enough to have minimal effect on the survival of the butterfly or its ability to occupy the habitat.

* * * * *

(5) Note: Index map of all critical habitat units for Florida leafwing follows:

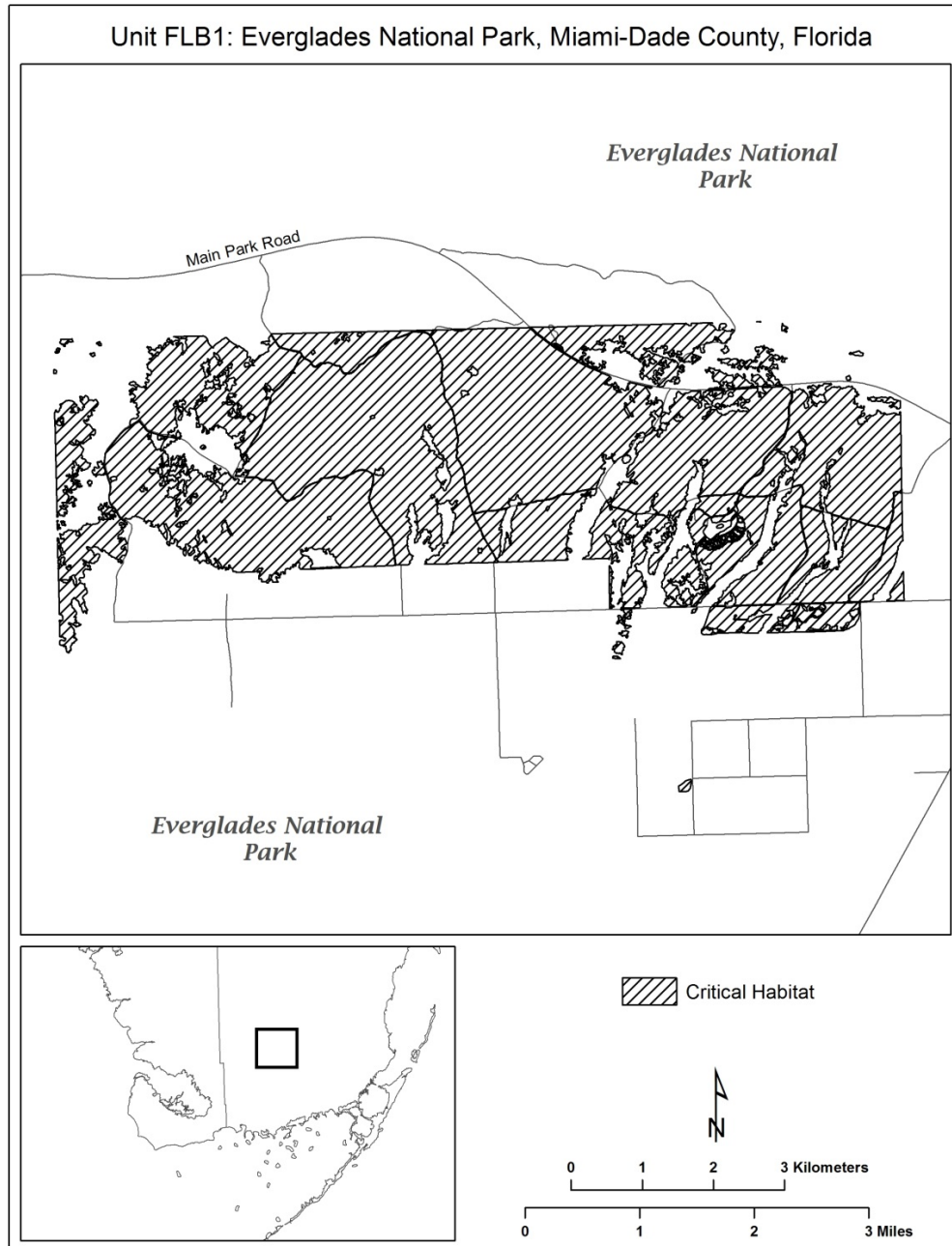


(6) Note: Unit FLB1: Everglades National Park, Miami-Dade County, Florida.

(i) *General Description:* Unit FLB1 consists of 7,994 ha (3,235 ac) in Miami-Dade County and is composed entirely of lands in Federal ownership, 100 percent of which are located

within the Long Pine Key region of Everglades National Park.

(ii) Map of Unit FLB1 follows:



* * * * *

Date: April 10, 2014

Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

Billing Code 4310-55

